

REMARKS/ARGUMENTS

Claims 20-29, 32-61, 63, and 67-71 are pending. Claims 1-19, 30-31, 62, and 64-66 are canceled. Claims 24-29, 35, 36, 46-52, and 57-61 are withdrawn pursuant to a Restriction Requirement. Claims 20-23, 32-34, 37-45, 53-56, 63, and 67-71 stand substantively rejected. In this Amendment, claims 20 and 41 are amended. Reconsideration of the claims is respectfully requested.

Claim Support

Support for the amended claims can be found at, for example, Figs. 1 and 2 of the instant application. No new matter is introduced.

First Rejection Under 35 USC §102

Claims 20-22, 32-34, 37-40, 63, and 69 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. 6,390,976 ["Spence"]. This rejection is traversed.

According to MPEP 2131, in order to anticipate a claim, a reference must teach all elements of the claim. Spence does not meet this test as applied to the amended claims.

Amended independent claim 20 is drawn to a system for enhancing minimally invasive heart surgery. Aspects of the amended claim can be understood with reference to the embodiment depicted in Fig. 1, partially reproduced below. The system of amended claim 20 includes a first flexible arm (e.g. 32) having a distal clamp (e.g. 40) and a proximal clamp (e.g. 36).

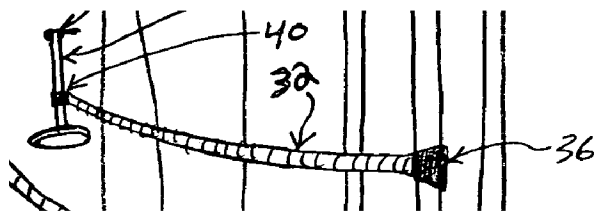


Fig. 1 of instant application

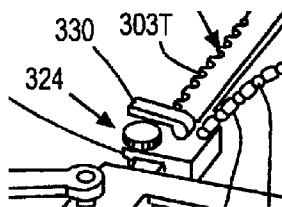


Fig. 12 of Spence

In contrast, Fig. 12 of Spence, partially reproduced above, shows an anchor element (324) mounted to a cross bar.

Applicants submit that Spence's anchor element (324) does not read on the flexible arm as recited in amended claim 20. According to Dictionary.com, The American

Heritage® Dictionary of the English Language, Fourth Edition. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/flexible> (accessed: January 14, 2009), the term “**flexible**” can be defined as follows:

flexible, 1a. *Capable of being bent or flexed; pliable.*

There is no suggestion in Spence that anchor element (324) is capable of being bent or flexed, or that it is pliable. Although Spence indicates the anchor element may be moveable relative to the cross bar upon which it is mounted, one cannot reasonably conclude that Spence’s anchor element is therefore “flexible.” Such an interpretation is contrary to the dictionary definition and would violate the plain language of the claim.

Because Spence does not teach or suggest a flexible arm as presently claimed, Spence does not anticipate amended claim 20. Presently pending claims 21, 22, 32-34, 37-40, 63, and 69 depend from base claim 20, and are therefore allowable as depending from an allowable base claim, as well as for the novel combination of elements they recite. Withdrawal of this rejection is requested.

Second Rejection Under 35 USC §102

Claims 41-43, 45, 53, 54, 56, and 70 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. 5,865,730 [“Fox”]. This rejection is traversed.

Amended independent claim 41 is drawn to a device for enhancing minimally invasive heart surgery. Aspects of the amended claim can be understood with reference to the embodiment depicted in Fig. 2, partially reproduced below. The device of amended claim 41 includes an elongate coupling member (e.g. 101) having an actuation device (e.g. 112) near the proximal end. The device also includes an elongate flexible arm (e.g. 114) having a clamp (e.g. 116). The elongate flexible arm is coupled with an elongate coupling member (e.g. 101) via the clamp at a position proximal to the surgical tool and distal to the actuation device (e.g. 112).

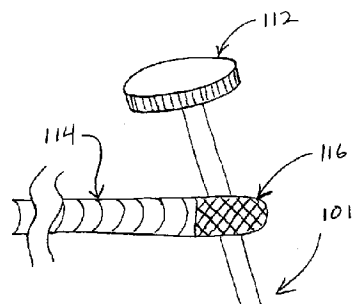


Fig. 2 of instant application

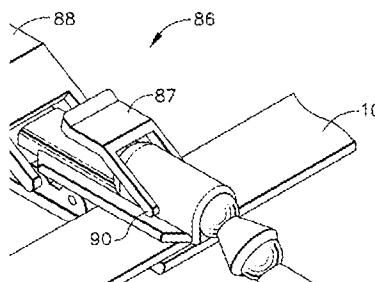


Fig. 13 of Fox

In contrast, Fig. 13 of Fox, partially reproduced above, shows a retractor mount (86) mounted on a retractor crossbar (10). If Fox's gooseneck (80) and retractor mount (86) are assumed to read on the elongate coupling member and actuation device, respectively, then Fox does not teach or suggest an elongate flexible arm having a clamp as presently claimed.

Because Fox does not teach or suggest a flexible arm as presently claimed, Fox does not anticipate amended claim 41. Presently pending claims 42, 43, 45, 53, 54, 56, and 70 depend from base claim 41, and are therefore allowable as depending from an allowable base claim, as well as for the novel combination of elements they recite. Withdrawal of this rejection is requested.

Third Rejection Under 35 USC §102

Claims 67 and 71 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. 6,758,809 ["Briscoe"]. This rejection is traversed.

Presently pending independent claim 67 is drawn to a system for enhancing minimally invasive heart surgery. The system includes a retractor device, a heart stabilizing device, a first coupling device, and a first flexible arm coupled with the first coupling device via a first clamp. The first flexible arm can be rigidified by applying suction.

Fig. 1A of Briscoe is reproduced below.

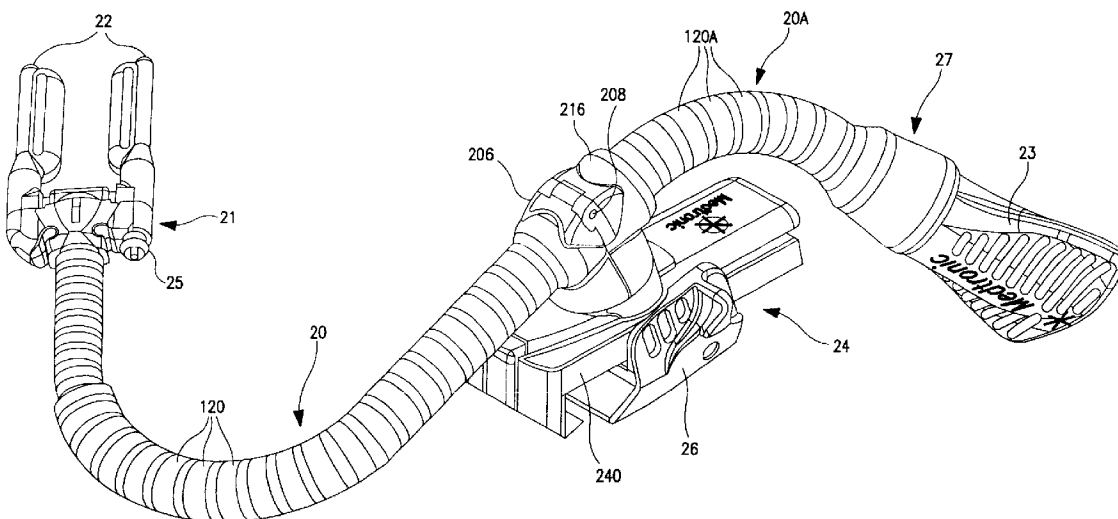


FIG. 1A

Briscoe's mechanism (21), arm (20), arm (20A), and handle (23) are alleged to read on the presently claimed heart stabilizing device, coupling device, flexible arm, and actuation device, respectively. However, there is no showing that Briscoe discloses a **retractor device** as recited in presently pending claim 67. Moreover, there is no showing that Briscoe's arm (20A) can be rigidified by applying suction. Hence, Briscoe has not been shown to anticipate independent claim 67. Presently pending claim 71 depends from base claim 67, and is therefore allowable as depending from an allowable base claim, as well as for the novel combination of elements it recites. Withdrawal of this rejection is requested.

First Rejection Under 35 USC §103

Claim 23 was rejected under 35 U.S.C. §103(a) as allegedly obvious over Spence in view of US 2003/0009080 ["Peng"]. This rejection is traversed.

As noted above, Spence does not suggest a flexible arm as recited in amended independent claim 20. Peng is cited for describing a ball joint, but does not remedy the deficiencies of Spence with regard to base claim 20. Hence the combination of Spence and Peng does not support a prima facie case of obviousness for claim 23, which depends from claim 20. Withdrawal of this rejection is respectfully requested.

Second Rejection Under 35 USC §103

Claims 44 and 45 were rejected s under 35 U.S.C. §103(a) as allegedly obvious over Fox in view of US 2003/0060685 [“Houser”]. This rejection is traversed.

As noted above, Fox does not suggest a flexible arm as recited in amended independent claim 41. Houser is cited for describing a tissue stabilizer, but does not remedy the deficiencies of Fox with regard to base claim 41. Hence, the combination of Fox and Houser does not support a *prima facie* case of obviousness with regard to claims 44 and 45 which depend from claim 41. Withdrawal of this rejection is respectfully requested.

Third Rejection Under 35 USC §103

Claim 68 was rejected s under 35 U.S.C. §103(a) as allegedly obvious over Briscoe in view of Spence. This rejection is traversed.

As noted above, Briscoe does not suggest a retractor as recited in independent claim 67 and there is no showing that Briscoe’s arm (20A) can be rigidified by applying suction. Spence is cited for describing a heart positioning device. Thus, a *prima facie* case of obviousness has not been established for claim 68 based on the proposed combination of Briscoe and Spence. Withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Appl. No. 10/731,683

PATENT

Amdt. dated January 22, 2009

Reply to Office Action of November 13, 2008

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

/Nathan S. Cassell/

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